In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 377

DONALD ANGELINI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–4a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1965. A petition for rehearing was denied on June 21, 1965. The petition for a writ of certiorari was filed on July 21, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the occupation tax and registration provisions of the federal wagering tax laws violate the privilege against self-incrimination.

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2. Whether willful failure to file a wagering tax return is an offense.

3. Whether wagering records were properly admitted into evidence when the person from whom they had been obtained was not called as a witness.

STATEMENT

A two-count indictment returned in the Northern District of Illinois charged petitioner with engaging in the wagering business between August 14, 1963, and August 24, 1963, in violation of section 7203 of the Internal Revenue Code, 26 U.S.C. 7203. Count 1 charged that petitioner willfully failed to pay the special $50 tax on engaging in the business of wagering. Count 2 charged that he willfully failed to register and file a wagering tax return (A. 7–8). Petitioner was found guilty. He was sentenced to imprisonment for 60 days and fined $2500 on count 1, and was placed on probation for a period of three years on count 2. (A. 47–48.)

At various times in August 1963, petitioner was watched by federal agents at a Cicero, Illinois, race track. He was observed exchanging money with Joe "Red" Altiere and other named persons (A. 17–18, 21, 23–25, 28) who had accepted wagers on the horse races (A. 25–27, 29–31), and making notations when he talked with these individuals (A. 17–18, 25). On one occasion a man handed petitioner $20 and said "$20 on Quarter Chief," and on another occasion a man gave him $15 and said "Chapter Rhythm." These were horses which ran in the next races (A. 12–13). Petitioner was never seen making a bet at

the pari-mutuel windows (A. 14, 20). On August 24, petitioner and Joe Altiere were arrested at the track. A search of petitioner's person at that time revealed that he had on his person various papers and $8,674.00 in currency (A. 15–16). An expert described the papers as "recap sheets relating to horseracing," listing the winnings on horses at the end of particular races (A. 34–35). The recap sheets showed exactly the same profits and losses for the first five races at the race track on August 24 as records seized from Altiere at the same time (A. 36–38). Petitioner had not paid the occupation tax or registered or filed the required return for the tax year ending June 30, 1964 (A. 10).

ARGUMENT

1. In *Lewis* v. *United States*, 348 U.S. 419, this Court rejected the argument that the occupational tax and registration provisions of the federal wagering tax laws violated the privilege against self-incrimination because petitioner was subject to a federal (District of Columbia) statute making wagering a crime. It stated (pp. 422–423):

> If he does not pay the occupational tax, proceeds to accept wagers, and is prosecuted therefore, as in this case, he cannot be compelled to testify and may claim his privilege. The only compulsion under the Act is that requiring the decision which would-be gamblers must make at the threshold. They may have to give up gambling, but there is no constitutional right to gamble. If they elect to wager, though it be unlawful, they must pay the tax.

It makes no difference that here petitioner is subject not to a District of Columbia, but to other statutes making wagering an offense. See, *e.g.*, *United States* v. *Zizzo*, 338 F. 2d 577, 580 (C.A. 7).

2. Under Count 2, petitioner was charged with willfully failing to register and file a wagering tax return. Section 7203 of the Internal Revenue Code provides that any person who is required to pay a tax or "by regulations made under authority thereof to make a return" and willfully fails to do so is guilty of a misdemeanor, and section 6011(a) provides that the Secretary of the Treasury may by regulation require that any person who is liable for a tax shall make a return. Therefore, contrary to petitioner's contention, the Secretary was authorized to promulgate a regulation requiring a wagering tax return. Such regulation is also consistent with section 4412 of the Code, which provides that every person required to pay the wagering occupation tax must register.

3. The records seized from Joe Altiere were properly admitted into evidence without his testimony. These records corresponded exactly with petitioner's recap sheets; they showed the same winnings and losses for the first five races at the race track. This similarity, plus the fact that petitioner had been observed dealing with Altiere, provided sufficient foundation for their introduction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965.

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